



# California Fair Political Practices Commission

July 8, 1987

Eric Jung  
Box 5031  
Bear Valley, CA 95223

Re: Your Request for Advice  
Our File No. A-87-154

Dear Mr. Jung:

You have requested advice concerning your duties, as a member of the Alpine County Board of Supervisors, under the conflict of interest provisions of the Political Reform Act (the "Act").<sup>1/</sup> You also have requested similar advice concerning Mr. Donald Graham, a member of the Alpine County Planning Commission. This letter responds only to your questions about your own duties under the Act. We cannot provide you with advice concerning Mr. Graham because your questions relate to his past conduct and because it does not appear from your letter that Mr. Graham has authorized you to request advice on his behalf. (Regulation 18329(b)(8), copy enclosed.)

## QUESTION

May you participate in decisions concerning restrictions on second-family attached units in the community of Bear Valley, where you operate a realty business?

## CONCLUSION

You may participate in decisions concerning restrictions on second-family attached units in Bear Valley unless it is reasonably foreseeable that either the gross revenues of your realty business would increase or decrease by \$10,000 or more in a fiscal year as a result of the decisions, or your personal income would increase or decrease by \$250 or more in a year as a result of the decisions.

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<sup>1/</sup> Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise indicated. Commission regulations appear at 2 California Administrative Code Section 18000, et seq. All references to regulations are to Title 2, Division 6 of the California Administrative Code.

#### FACTS

The community of Bear Valley consists of 250 homes. Currently, second-family attached units ("granny units") are permitted in the homes in Bear Valley as long as they fulfill certain conditions. At present, there are 35 homes in Bear Valley with granny units.

The Alpine County Planning Commission has recently recommended that Bear Valley be rezoned so that new granny units would be permitted only with a transfer of development credit. The purpose of this proposal is to preserve the primarily single-family character of the residential community. The proposal is now before the Board of Supervisors of Alpine County.

You are a one-half partner in Cub Realty, one of two real estate sales offices located in Bear Valley. You also reside in a granny unit in Bear Valley.

#### ANALYSIS

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103 (a) - (c).

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According to the facts provided in your letter and in your statement of economic interests, your investment interest in Cub Realty is valued at \$1,000 or more. You also have received at least \$250 in income from Cub Realty during the past 12 months. Accordingly, if the decision to restrict granny units in Bear Valley would foreseeably and materially affect Cub Realty, you must disqualify yourself from participating in the decision.

In addition to considering the effect of the decisions on Cub Realty, we also must consider the effect on you. Specifically, if a decision would foreseeably and materially affect your personal income (i.e., the amount of real estate commission income you receive), you must disqualify yourself from participating in that decision.<sup>2/</sup>

In determining whether you may participate in the decision to restrict granny units in Bear Valley, we must first analyze whether an effect on your real estate business or on your personal income is reasonably foreseeable. An effect is "reasonably foreseeable" if there is a substantial likelihood that it will occur. Certainty is not required; however, if the effect is only a mere possibility, it is not reasonably foreseeable. (Thorner Opinion, 1 FPFC Ops. 198 (No. 75-089, Dec. 4, 1975), copy enclosed.)

In your letter, you have stated that the proponents of the proposal to restrict granny units in Bear Valley are concerned that property values in the community will deteriorate without the proposed restrictions. You also have stated that they assert that a home with a granny unit will sell for more than a home without a granny unit. Whether the property values in Bear Valley increase or decrease as a result of restrictions on granny units, some effect on real estate values as a result of the proposal appears likely. Your personal income and the revenues of Cub Realty include real estate sales commissions, generally based on a percentage of the sales price. Cub Realty

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<sup>2/</sup> You also have informed us that you reside in a granny unit which you rent on a month-to-month basis. Existing granny units would not be affected by the proposed decisions. In any case, a periodic tenancy of one month or less is not considered an interest in real property for purposes of the Act. (Regulation 18233, copy enclosed.) Therefore, your residence would not be the basis for your disqualification under the conflict of interest laws.

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is one of two realty offices located in Bear Valley. Accordingly, an increase or decrease in property values would foreseeably affect the commission income you and your real estate business would receive.<sup>3/</sup>

The next issue is whether the foreseeable effects of the decision on your realty business will be material. Regulations 18702.1 and 18702.2 (copies enclosed) set forth monetary guidelines for determining whether the effect of a decision will be considered material.

The materiality guidelines for business entities appear in Regulation 18702.2. These guidelines vary with the financial size of the business entity. Based on the information provided in your letter, it appears that Regulation 18702.2(g) contains the standard which applies to Cub Realty. Thus, if it is reasonably foreseeable that the decision to restrict granny units would increase or decrease the gross revenues (gross commission income) of Cub Realty by \$10,000 or more in a fiscal year, the effect is considered material.<sup>4/</sup>

In addition, Regulation 18702.1(a)(4) provides that an increase or decrease of \$250 or more in an official's personal income in a year is considered material. Accordingly, you must disqualify yourself from the decision to restrict granny units in Bear Valley if the decision would foreseeably result in a sufficient change in property values in Bear Valley that the commissions you receive would increase or decrease by \$250 or more in a year.<sup>5/</sup>

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<sup>3/</sup> For purposes of the conflict of interest analysis, it makes no difference whether the decision would benefit or hurt you or Cub Realty. If an effect is foreseeable and material, you must disqualify yourself from participating in the decision.

<sup>4/</sup> The gross revenues of Cub Realty do not include fees contractually split with sales agents or with other brokers. (Carey Opinion, 3 FPPC Opinions 99 (No. 76-087, Nov. 3, 1977), copy enclosed).

<sup>5/</sup> This assumes that you contractually receive some percentage of commission income directly as a result of a sale which you handle, as opposed to the portion of the commission which goes to Cub Realty. (See Carey Opinion, supra.) If this is not the case, Regulation 18702.1(a)(4) would not apply and you would analyze only the effects on the gross revenues of Cub Realty.

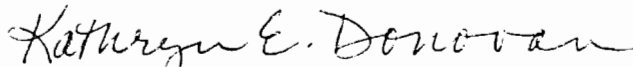
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We do not have sufficient facts to determine whether the decision in question is likely to affect your personal income by \$250 in a year or the gross commission income of Cub Realty by \$10,000 or more in a fiscal year. You are in a better position to analyze the potential effects of the decision on your real estate business and to determine whether a significant change in your business or personal income is likely to occur.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths  
General Counsel

A handwritten signature in cursive script that reads "Kathryn E. Donovan".

By: Kathryn E. Donovan  
Counsel, Legal Division

DMG:KED:jaj  
Enclosures

87-154

F P P

JUN 9 8 29 AM '87

*Eric Jung*  
*Supervisor, District 4*  
*County of Alpine*  
*State of California*

JUNE 3, 1987

TELEPHONE  
(209) 753-2819

FAIR POLITICAL PRACTICES COMMISSION  
428 J ST. SUITE 800  
SACRAMENTO, CA 95814

DEAR SIRs,

I WISH TO REQUEST AN OPINION ON A POSSIBLE CONFLICT OF INTEREST.

THE FACTS ARE THESE: IN 1983, PURSUANT TO A NEW STATE LAW, SECOND FAMILY ATTACHED UNITS OR "GRANNY UNITS" WERE MADE LEGAL IN ALPINE COUNTY AS LONG AS THEY FULFILLED CERTAIN CONDITIONS.

THIS YEAR THE ALPINE COUNTY PLANNING COMMISSION RECOMMENDED THAT THE COMMUNITY WHERE I LIVE, BEAR VALLEY, BE REZONED FROM SINGLE FAMILY RESIDENTIAL (WITH GRANNY UNITS ALLOWED UNDER CERTAIN CONDITIONS) TO PLANNED DEVELOPMENT, WITH GRANNY UNITS ALLOWED ONLY WITH A TRANSFER OF DEVELOPMENT CREDIT.

THIS RECOMMENDATION WAS FAVORED BY THE ONE PLANNING COMMISSIONER WHO LIVES HERE IN BEAR VALLEY, MR. DONALD GRAHAM, WHO OWNS A HOME IN BEAR VALLEY IN THE AREA AFFECTED. ONE OF MR. GRAHAM'S ARGUMENTS AGAINST GRANNY UNITS IS THAT TO ALLOW THEM WITH THE PRESENT CONTROLS WOULD RESULT IN A LOWERING OF THE PROPERTY VALUES IN A NEIGHBORHOOD THAT IS PRIMARILY SINGLE FAMILY IN CHARACTER.

I HAVE OPPOSED THIS RECOMMENDATION, AND VOTED AGAINST IT WHEN IT CAME BEFORE THE BOARD OF SUPERVISORS. AT THE RECOMMENDATION OF MY COUNTY COUNSEL, I WITHDREW MY VOTE FOR POSSIBLE CONFLICT.

I AM A PARTNER IN AND A SALESMAN AT CUB REALTY IN BEAR VALLEY, WHICH IS THE POSSIBLE SOURCE OF THE CONFLICT. IT IS MY CONTENTION THAT THE EFFECT ON PROPERTY VALUES AS A WHOLE OF LESSER CONTROLS ON GRANNY UNITS IS PROBLEMATIC AT BEST; I BELIEVE IT WOULD BE DIFFICULT TO DEMONSTRATE A CONNECTION EITHER WAY BETWEEN THE DEGREE OF CONTROL ON ATTACHED APARTMENTS, AND THE PROPERTY VALUES IN THE BEAR VALLEY SUBDIVISION. MY ARGUMENT FOR THE LESSER CONTROLS IS BASED ON ECONOMIC NECESSITY. BEAR VALLEY IS AN ISOLATED MOUNTAIN COMMUNITY WITH HEAVY WINTER SNOWS. BEAR VALLEY'S DEVELOPMENT PLAN WAS ABANDONED YEARS AGO, MOSTLY BECAUSE THE ORIGINAL DEVELOPMENT COMPANY WENT BANKRUPT.

ONE OF THE CRITICAL COMPONENTS OF THE DEVELOPMENT THAT WAS LEFT

*Eric Jung*  
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*State of California*

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II

UNDONE WAS EMPLOYEE HOUSING. THERE IS NO DESIGNATED LOW COST HOUSING FOR RENTALS AS WAS ORIGINALLY PLANNED. THE GRANNY UNITS HAVE HELPED FILL THIS VOID, AND I CONTEND THAT, WHATEVER MINOR EFFECT THEY MIGHT HAVE ON PROPERTY VALUES UP OR DOWN, THEY ARE A NECESSITY UNTIL SOMEONE PUTS UP 50 TO 100 UNITS OF EMPLOYEE HOUSING.

I SHARE PLANNING COMMISSIONER GRAHAM'S CONCERN WITH MAINTAINING THE PRIMARILY SINGLE FAMILY CHARACTER OF THE SUBDIVISION. CURRENTLY THERE ARE 35 GRANNY UNITS IN 250 HOMES. I HAVE PROPOSED AN ALTERNATE CONTROL ON APARTMENTS, A RATIO OF ALLOWABLE UNITS TO TOTAL HOMES.

INCIDENTALLY, I HAPPEN TO LIVE IN A GRANNY UNIT. MY UNIT WOULD NOT BE AFFECTED BY THE PLANNING COMMISSION'S RECOMMENDATION, SINCE THEIR IS A "GRANDFATHER" CLAUSE FOR EXISTING UNITS.

COMMISSIONER GRAHAM ALSO CONTENDS THAT I HAVE A CONFLICT SINCE A HOME WITH A GRANNY UNIT IN IT WOULD SELL FOR MORE THAN ONE WITHOUT, AND I WOULD STAND TO MAKE A GREATER COMMISSION ON SUCH A SALE.

I FEEL THAT HERE ALSO THE CONNECTION IS TENUOUS AT BEST, AND VERY DIFFICULT TO DEMONSTRATE AT ALL OR QUANTIFY. THE TECHNICAL DIFFERENCE BETWEEN A BASEMENT WITH A BATHROOM AND A GRANNY UNIT IS THE PRESENCE OF A STOVE. THE BASEMENT IS RENTABLE WITH OR WITHOUT THE STOVE, AND THE VALUE OF THE HOUSE WITH AN APARTMENT WOULD BE GREATER THAN THE VALUE OF THE HOUSE WITH BASEMENT SANS STOVE BY ONLY THE VALUE OF THE STOVE ITSELF, EVERYTHING ELSE BEING EQUAL.

MY PARTNER JIM DEIS, WHO MAY NOT BE IMPARTIAL IN THIS MATTER, IS THE BROKER AND A CERTIFIED APPRAISER AT CUB REALTY. IN HIS OPINION, THE PRESENCE OR ABSENCE OF AN APARTMENT IN A HOUSE IS NOT, IN AND OF ITSELF, A SIGNIFICANT FACTOR IN DETERMINING THE VALUE OF A HOUSE IN BEAR VALLEY.

IN SUM, I DON'T FEEL THAT A SIGNIFICANT FINANCIAL GAIN FROM MY VOTE EITHER WAY CAN BE DEMONSTRATED. I DON'T BELIEVE ANYONE REALLY KNOWS AT THIS POINT WHAT EFFECT APARTMENT CONTROLS IN A CLOSED SYSTEM LIKE BEAR VALLEY HAVE ON PROPERTY VALUES IN GENERAL, OR ON THE VALUE OF A

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III

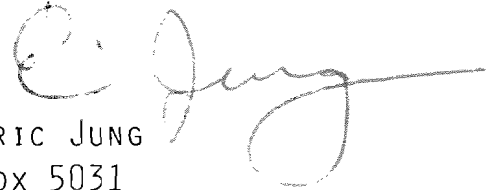
HOME IN PARTICULAR. IN FACT, IF THE PROPONENTS OF THE PLANNING COMMISSION RECOMMENDATION ARE TO BE BELIEVED, THEIR SCHEME WOULD RAISE PROPERTY VALUES, AND MY OPPOSING VOTE WOULD TEND TO HURT MY REAL ESTATE BUSINESS. I BELIEVE THAT PRUDENT CONTROLS WHICH PRESERVED THE SINGLE FAMILY CHARACTER OF THE SUBDIVISION WHILE ALLOWING A CERTAIN NUMBER OF GRANNY UNITS WOULD HAVE A SALUTARY EFFECT WHICH WOULD BE FELT THROUGHOUT THE COMMUNITY AS A WHOLE WITHOUT NECESSARILY BENEFITTING ANYONE IN PARTICULAR. THE PEOPLE WHO LIVE IN THE APARTMENTS HELP KEEP LOCAL BUSINESSES ALIVE BY PATRONIZING THEM IN THE IN-BETWEEN-TOURIST TIMES, ALTHOUGH THEY ARE NOT THE KIND OF PEOPLE WHO TEND TO BUY REAL ESTATE. MOST OF THE HOMES HERE ARE VACATION HOMES, AND THE OCCUPANCY HERE IS PROBABLY AROUND 25% EXCEPT ON HOLIDAY WEEKENDS. SO THE PEOPLE WHO MAN THE VOLUNTEER FIRE DEPARTMENT, RUN THE SKI LIFTS, AND KEEP THE TOWN RUNNING IN GENERAL, ARE THE PEOPLE WHO CANNOT AFFORD TO RENT A \$150,000 VACATION HOME, BUT NEED SOMETHING LIKE THE APARTMENTS.

I FEEL I HAVE ACTED WITHOUT REGARD FOR MY PERSONAL GAIN IN THIS MATTER, BUT I AM WILLING TO SUBMIT TO YOUR JUDGMENT. I WOULD LIKE TO BE ABLE TO VOTE ON A MATTER WHICH I CONSIDER CRITICAL TO THE WELL-BEING OF MY HOME TOWN AND MY COUNTY.

SO: DO I HAVE A CONFLICT? DOES PLANNING COMMISSIONER GRAHAM HAVE A CONFLICT? WOULD SOMEONE HAVE TO DEMONSTRATE THE QUANTIFIABLE FINANCIAL EFFECT ON MY REAL ESTATE BUSINESS BEFORE I COULD BE SAID TO HAVE A CONFLICT, OR IS THE BURDEN OF PROOF ON ME?

IF YOU WISH TO RESEARCH FURTHER, OUR COUNTY COUNSEL IS HENRY MURDOCK, 916/694-2971; OUR COUNTY PLANNER, WHO APPEARS TO BE NEUTRAL IN THIS MATTER, IS LEONARD TURNBEAUGH, 916/694-2255.

AWAITING YOUR OPINION, I AM RESPECTFULLY YOURS,

  
ERIC JUNG  
Box 5031

BEAR VALLEY, CA 95223